

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 8722 / July 14, 2006

SECURITIES EXCHANGE ACT OF 1934  
Release No. 54149 / July 14, 2006

ADMINISTRATIVE PROCEEDING  
File No. 3-12366

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**In the Matter of**

**Herzog, Heine, Geduld, LLC,**

**Respondent.**

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: **ORDER UNDER SECTION 27A(b)**  
: **OF THE SECURITIES ACT OF 1933**  
: **AND SECTION 21E(b) OF THE**  
: **SECURITIES EXCHANGE ACT OF 1934,**  
: **GRANTING WAIVERS OF THE**  
: **DISQUALIFICATION PROVISIONS OF**  
: **SECTION 27A(b)(1)(A)(ii) OF THE**  
: **SECURITIES ACT OF 1933 AND**  
: **SECTION 21E(b)(1)(A)(ii) OF THE**  
: **SECURITIES EXCHANGE ACT OF 1934**  
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Merrill Lynch & Co., Inc. (“Merrill”) has submitted a letter, dated June 19, 2006, requesting waivers of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 (“Securities Act”) and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 (“Exchange Act”) arising from settlement by Herzog, Heine, Geduld, LLC (“Herzog”), an affiliated entity of Merrill, of an administrative proceeding commenced by the Commission.

On July 14, 2006, pursuant to Herzog’s Offer of Settlement, the Commission issued an Order Instituting Administrative Proceedings, Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 against Herzog (the “Order”). Under the Order, the Commission found that Herzog willfully violated Sections 15(c)(1) and 17(a)(1) of the Exchange Act and Exchange Act Rule 17a-4(b)(4) by (1) failing to provide best execution to customer orders received from correspondent broker-dealer firms; and (2) failing to preserve emails related to its business as such. The Order censures Herzog and requires it to pay a civil penalty of \$1.5 million.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward-looking statement that is “made with respect to the business or operations of the issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of a judicial or administrative decree or order arising out of a governmental action that (I) prohibits future violations of the

antifraud provisions of the securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]” Section 27A(b)(1)(A)(ii) of the Securities Act; Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived “to the extent otherwise specifically provided by rule, regulation, or order of the Commission.” Section 27A(b) of the Securities Act; Section 21E(b) of the Exchange Act.

Based on the representations set forth in Merrill’s request, the Commission has determined that, under the circumstances, the request for waivers of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, IT IS ORDERED, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that waivers from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Merrill and its affiliated companies resulting from the entry of the Order are hereby granted.

By the Commission

Nancy M. Morris  
Secretary